

**Letter of Findings: 02-20140406**  
**Corporate Income Tax**  
**For the Years 2004, 2005, 2006, and 2008**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Corporate Income Tax - Net Operating Loss Carrybacks.**

**Authority:** IC § 6-3-2-1(b); IC § 6-3-2-2.6(b); IC § 6-3.1-31.2-11(b); IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department of Revenue erred when it disallowed Taxpayer's net operating losses.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company doing business in Indiana which filed Indiana corporate income tax returns. The returns sought to carryback net operating losses. The Indiana Department of Revenue ("Department") disallowed the losses resulting in the assessment of additional income tax. Taxpayer disagreed with that decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

**I. Corporate Income Tax - Net Operating Loss Carrybacks.**

**DISCUSSION**

Taxpayer maintains it is entitled to carry back net operating losses attributable to years before December 31, 2011.

Since the Department's decision resulted in an assessment of additional tax, it is the Taxpayer's responsibility to establish that the assessments are incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Prior to 2011, IC § 6-3-2-2.6 generally permitted net operating losses to be carried forward and carried back in the same manner that the losses were carried forward and back for federal income tax purposes. However, in 2011, IC § 6-3-2-2.6(b) was amended to read:

Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried over to that year. A taxpayer is not entitled to carryback any net operating losses after December 31, 2011. (Emphasis added).

Taxpayer argues that the disallowance of net operating carrybacks should only apply to net operating losses incurred during tax periods ending after December 31, 2011. For example, according to Taxpayer, a 2010 loss could still be carried back on a 2012 return because the loss occurred prior to the December 31, 2011, cut-off date specified in IC § 6-3-2-2.6(b).

Taxpayer disagrees with the Department's application of IC § 6-3-2-2.6. According to Taxpayer, "[IC 6-3-2-2.6](#) is obviously meant to indicate that losses incurred in tax year[s] 'beginning' after December 2011 would not be allowed to be carried back to prior years."

The Department recognizes Taxpayer's argument but the language in the statute clearly states that Indiana taxpayers are "not entitled to carryback any net operating losses after December 31, 2011." In contrast, another portion of the same bill (P.L. 172-2011 § 71), IC § 6-3.1-31.2-11(b) states:

- (a) A tax credit may not be awarded under this chapter for costs incurred after December 31, 2011.
- (b) Any tax credit previously awarded but not claimed may not be carried over to a taxable year beginning during the period January 1, 2012, through December 31, 2013, and must be carried forward to a taxable year that begins after December 31, 2013, and before January 1, 2016.

In the case of IC § 6-3.1-31.2-11—a different section of the same bill in which IC § 6-3-2-2.6(b) was amended—the statute contained language explicitly limiting and allowing the tax credit in question for particular taxable years. In addition, IC § 6-3-2-1(b), which reduced corporate income tax rates over a three-year period, applied the rate reductions by explicit reference to taxable years and is another section of the same bill in which IC § 6-3-2-2.6(b) was amended. Further, in other cases, Indiana statutes have explicitly referred to taxable years. See, e.g., IC § 6-3-2-2(b) (phasing in single-factor apportionment). Similar language relating to taxable years is notably absent from IC § 6-3-2-2.6(b).

The absence of any language relating to taxable years in IC § 6-3-2-2.6(b) leads to the conclusion that net operating losses are not permitted to be carried back after December 31, 2011, regardless of the tax period in which the losses were incurred.

### **FINDING**

Taxpayer's protest is respectfully denied.

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